

DETAILED ACTION

Summary

1. This is the response to the communication filed on 10/25/2010.
2. Claims 10 and 12-22 are currently pending.
3. Claims 12-14 and 19-20 are withdrawn from consideration.

Election/Restrictions

4. Newly amended claims 10, 15-18 and 21-22 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Claim 10 is amended to include the limitation "wherein the sensor element does not include a measuring chamber"; however, the elected species B according to Applicant's reply received on 07/15/2010, which is depicted in figures 3-4 as discussed in the restriction requirement mailed on 06/16/2010 has a measuring chamber 23. This is evidenced by the fact that the originally filed specification explicitly stated that "the absence of a measuring chamber or cavity permits the gas inlet bore hole to be omitted" (page 2 lines 26-29); whereas, figures 3-5 of the elected species B clearly shows the inlet bore hole 24, which allows gas to diffuse to the measuring chamber 23.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 10, 15-18 and 21-22 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

5. The amendment filed on 10/25/2010 with regard to claims 10, 15-18 and 21-22 containing "a measuring chamber" that is drawn to the non-elected species A. The amendment causes claims 10, 15-18 and 21-22 to be withdrawn from consideration as stated above; therefore, the amendment is in effect canceling all claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention because all pending claims are withdrawn from consideration.

Since the above-mentioned amendment appears to be a bona fide attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

Response to Amendment

6. The reply filed on 10/25/2010 is not fully responsive to the prior Office Action because: The amendment, in effect, causes all pending claims to be withdrawn from consideration due to election by original presentation as discussed above.
7. Since the period for reply set forth in the prior Office action has expired, this application will become abandoned unless applicant corrects the deficiency and obtains an extension of time under 37 CFR 1.136(a).

The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the

corresponding amount of the fee. In no case may an applicant reply outside the SIX (6) MONTH statutory period or obtain an extension for more than FIVE (5) MONTHS beyond the date for reply set forth in an Office action. A fully responsive reply must be timely filed to avoid abandonment of this application.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BACH T. DINH whose telephone number is (571)270-5118. The examiner can normally be reached on Monday-Friday EST 7:00 A.M-3:30 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nam X. Nguyen can be reached on (571)272-1342. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nam X Nguyen/
Supervisory Patent Examiner, Art Unit 1753

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